No. 15352

In the United States Court of Appeals for the Ninth Circuit

COUNTY OF SAN DIEGO AND CITY OF SAN DIEGO, APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

CHARLES W. CARLSTROM, SOUTHERN CALIFORNIA CHILDREN'S AID FOUNDATION, INC., a Corporation, SOUTHERN CALIFORNIA DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, INC., a Corporation, and THE SALVATION ARMY, APPELLANTS

v.

COUNTY OF SAN DIEGO, APPELLEE

Appeal from the United States District Court for the Southern District of California, Southern Division

BRIEF FOR THE UNITED STATES, APPELLEE

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OPINION BELOW

The memorandum opinion of the district court (R. 54-65) is not reported.

JURISDICTION

This is an appeal from a final judgment of the district court entered pursuant to Rule 54(b), Fed-

eral Rules of Civil Procedure, granting a summary judgment against San Diego County on its claim for county, city and school district taxes for fiscal year 1955-1956.

The district court has jurisdiction of the condemnation proceeding under 28 U.S.C. sec. 1358. The authority for the taking is the Act of February 26, 1931, 46 Stat. 1421, 40 U.S.C. sec. 258a, and acts supplementary thereto and amendatory thereof; Act of August 1, 1888, 25 Stat. 357, 40 U.S.C. sec. 257; Act of August 18, 1890, 26 Stat. 316, as amended by Acts of July 2, 1917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518, 50 U.S.C. sec. 171, which acts authorize the acquisition of land for military purposes; Act of August 12, 1935, 49 Stat. 610, 611; 10 U.S.C. sec. 1343, a, b, and c, which act authorizes the acquisition of land for air force stations and depots; Act of July 26, 1947, 61 Stat. 495; Act of July 10, 1952, 66 Stat. 517, and Act of June 30, 1954, 68 Stat. 337, which acts authorize acquisition of land and appropriated funds for such purposes. Judgment was entered July 26, 1956, *nunc pro tunc* as of July 10, 1956 (R. 65-83). Notice of appeal was filed by the defendant County and City of San Diego, August 22, 1956 (R. 83). A cross-appeal by defendant landowners was filed August 31, 1956 (R. 84-85).

STATEMENT

This appeal arises out of a proceeding to condemn an aircraft manufacturing plant, Consolidated Aircraft Plant No. 2, at San Diego, California. The

United States filed the original complaint and declaration of taking April 29, 1953. An order was entered granting possession as of May 1, 1953, and the United States has since been in continuous possession. The original estate taken was a term for years commencing May 1, 1953, and ending June 30, 1954, extendible for yearly periods thereafter at the election of the United States until June 30, 1958.

The United States on June 16, 1955, filed its first amended complaint in condemnation and declaration of taking which provided for the taking of a right of exclusive use and occupancy from May 1, 1953, to the filing of the first amended complaint, and thereafter an estate in fee simple was taken (R. 3-11). Under the California statutes, tax liens attach annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied (Cal. Rev. & Tax. Code, sec. 2192, Br. 6). Thus when the fee title vested in the United States on June 16, 1955, pursuant to the declaration of taking, the tax liens for the fiscal year beginning July 1, 1955, had already attached. It was to remove the liens that the United States Attorney on November 5, 1955, mailed to the Board of Supervisors of the County of San Diego a petition for cancellation of the general taxes for the fiscal year 1955-1956 (R. 25-28). The Board of Supervisors denied the petition on January 10, 1956 (R. 29). San Diego County had in the meantime filed an answer in the condemnation proceedings on August 5, 1955, wherein it sets forth its interest in the property as being a lien for the City of San Diego, County of

San Diego and School District taxes for the fiscal year 1955-1956 [1] which had become a lien on the first Monday of March, 1955 (R. 12). The amount of such taxes "will be ascertainable on or about October 1, 1955." (R. 12). The supplemental answer setting forth the exact amount of the taxes on each tract was filed by San Diego County on December 30, 1955, totalling some $334,912.62. (R. 16-18).

The United States, upon denial of its petition to cancel taxes, made a motion in the United States district court, which was granted, for an order to show cause why the court should not direct the cancellation of taxes or in the alternative for summary judgment that the County take nothing by its answer (R. 18-43). The defendant landowners also made a motion to strike parts of the answer and supplemental answer of the County on the ground that the lien for taxes was not valid (R. 43-54). The order to show cause and the motion to strike having been heard together, the district court wrote a memorandum discussing at length the parties' contentions and on May 18, 1956, granted the motion of the United States for summary judgment and denied the motion to strike (R. 54-65). Final judgment, with findings of fact and conclusions of law, was docketed July 26, 1956 (R. 65-83). The judgment entered against the County was that it should take nothing by its answer and supplemental answer, and

---

[1] Incorrectly appearing in the record as being "for the fiscal year 1954-1955" (R. 12). The correct fiscal year, 1955-1956, appears in San Diego County's supplemental answer (R. 16).

that the United States and the defendant landowners should go free of all claims whatsoever which the County might assert on account of the taxes for fiscal year 1955-1956 against themselves, the condemned property or the funds deposited in court (R. 81). The district court also made an express determination that the claims for taxes were suitable for entry of a final judgment pursuant to Rule 54(b), Federal Rules of Civil Procedure (R. 76, 80).

The only issue before the Court on these appeals concerns the summary judgment denying the tax claim. The issue of just compensation, not involved here, has been tried before the district court with a jury subsequent to entry of the July 26, 1956 judgment. The trial started on January 22, 1957, and the jury returned its verdict on May 27, 1957. The total award for all tracts is approximately $1,729,000 as compensation for the term for years, and $5,944,000 for the fee, including both the jury verdict and settlements on tracts not submitted to the jury. Final judgment has not been entered. Accordingly the time for appeal has not expired. It is entirely possible that an appeal from the final judgment awarding just compensation may be taken to this Court.

QUESTION PRESENTED

Whether the United States has the right under California law to have the uncollected taxes cancelled on Consolidated Aircraft Plant No. 2 where the property was acquired by condemnation after the lien date.

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ARGUMENT

I

The United States' Position on This Appeal

The United States agrees with appellants insofar as they argue that the issue before the Court is a matter of distribution (Br. 14-16), and, limited to this case, it is equally true that no direct financial benefit will acrue to the United States from this appeal. The United States does have a very substantial interest, however, in how the Court decides the issue appealed. Whether the United States is entitled to have uncollected taxes cancelled in the appropriate instances will have a grave effect on the handling and settlement of just compensation claims for property condemned in California. The United States is decidedly affected by the efficient management of condemnation proceedings. An everpresent factor in the prompt termination of condemnation proceedings, especially where there are compromise settlements, is taxes which will be payable out of the amount awarded or agreed on as just compensation. Naturally the landowner is only concerned with the net amount which will accrue to him. The United States is, conversely, concerned with the gross amount to be paid for the property condemned. Neither party can evaluate his position until his rights and responsibilities with respect to local taxes are firmly settled. Only then can it be definitely ascertained whether a suggested settlement figure or, indeed even a verdict, adequately compensates the landowner or is an excessive expenditure of Government funds.

The decision of this Court on whether the United States has a right to the cancellation of uncollected taxes under Sections 4986 and 4986.2 of the Revenue and Taxation Code of California is, therefore, one in which the United States is vitally interested.

II

Section 4986 Gives The United States An Unrestricted Right To Have Uncollected Taxes Cancelled On Property It Acquires After Lien Date

The United States has a complete, unfettered right under California statutes to have uncollected taxes cancelled on property acquired after the lien date where such property becomes exempt from taxation under the laws of the United States. California Revenue & Taxation Code, Secs. 4986, 4986.2.[2] The exact language of the pertinent portions of Section 4986 is:

> All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be cancelled by the auditor on order of the board of supervisors with the written consent of the district attorney if it were levied or charged:
>
> * * * *
>
> (f) On property acquired after the lien date by the United States of America if

[2] Section 4986.2 is basically an incorporation of Section 4986 by reference, as applied to city taxes, with the substantive rights of the United States being the same in both sections. Therefore no separate argument will be presented for Section 4986.2 and all references to Section 4986 should be construed equally applicable to Section 4986.2.

> such property upon such acquisition becomes exempt from taxation under the laws of the United States.
>
> * * * *

Section 4986, which was recodified in 1939 (Stats. 1939, C. 154, P. 1366, Sec. 4986), is derived from Section 3804a of the Political Code. Section 3804a was consistently interpreted as being mandatory on the board of supervisors and not merely permissive notwithstanding the seemingly permissive language that the tax "may * * * be canceled * * *." Whenever the fact situation was such that the board of supervisors had authority to cancel under Section 3804a the California courts took the position that a writ of mandate would issue to compel cancellation. *State Land Settlement Board* v. *Henderson*, 197 Cal. 470, 241 Pac. 560 (1925); *City of Los Angeles* v. *Board of Supervisors*, 108 Cal.App. 655, 292 Pac. 539 (3d Dist. Ct. of App., 1930), hearing denied by Sup. Ct. 1930; *People* v. *Board of Supervisors*, 126 Cal.App. 670, 15 P.2d 209 (3d Dist. Ct. of App., 1932), hearing denied by Sup. Ct. 1932; *City of Los Angeles* v. *Ford*, 12 Cal.2d 407, 84 P.2d 1042 (1938); *Glen-Colusa Irr. System* v. *Ohrt*, 31 Cal.App.2d 619, 88 P.2d 763 (3d Dist. Ct. of App. 1939); see *Anderson-Cottonwood Irr. Dist.* v. *Klukkert*, 13 Cal.2d 191, 88 P.2d 685 (1939).

The issuance of writs of mandate to compel cancellation of taxes in appropriate situations has been continued since 1939 under Section 4986 of the Revenue and Taxation Code. *Bank of America Nat. T. & S. Ass'n v. Board of Supervisors*, 93 Cal.App.2d

75, 208 P.2d 772 (2d Dist. Ct. of App. 1949), hearing denied by Sup. Ct. 1949; *Oakdale Irr. Dist.* v. *County of Calaveras*, 133 Cal.App.2d 127, 283 P.2d 732 (3d Dist. Ct. of App. 1955), hearing denied by Sup. Ct. 1955. See *Pomona Cemetery Ass'n* v. *Board of Supervisors*, 49 Cal.App.2d 626, 122 P.2d 327 (1st Dist. Ct. of App., 1942), hearing denied by Sup. Ct. 1942.

The use of the word "may" in this statute as a command is consistent with a general rule of statutory construction which has been adopted by the California courts. The rule is explained as follows in *Harless* v. *Carter*, 42 Cal.2d 352, 356, 267 P.2d 4, 7 (1954):

> Certainly, he might not have refused to act upon the ground that the statute states that he "may" sell upon the demand of a bondholder "where persons or the public have an interest in having an act done by a public body 'may' in a statute means 'must.' (Citation.) Words permissive in form, when a public duty is involved, are considered as mandatory." Uhl v. Badaracco, 199 Cal. 270, 282, 248 P. 917, 921. "Where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large— that is, where the public interest or private right requires that the thing should be done—then the language though permissive in form, is peremptory." County of Los Angeles v. State, 64 Cal. App. 290, 295, 222 P. 153, 156.

Other cases which have followed the holding in *County of Los Angeles* v. *State* are: *Stockton Plumb-*

ing & Supply Co. v. *Wheeler*, 68 Cal. App. 592, 599, 229 Pac. 1020, 1023 (3d Dist. Ct. of App. 1924); *Capt. C. V. Gridley Camp No. 104 etc.* v. *Bd. of Sup. of Butte County*, 98 Cal.App. 585, 596, 277 Pac. 500, 505 (3d Dist. Ct. of App. 1929); *Bell* v. *Redwine*, 98 Cal. App. 784, 787, 277 Pac. 1050, 1051 (3d Dist. Ct. of App. 1929); *Bates* v. *McHenry*, 123 Cal.App. 81, 91, 10 P.2d 1038, 1042 (3d Dist. Ct. of App. 1932); *Kentfield et al.* v. *Reclamation Board*, 137 Cal.App. 675, 684, 31 P.2d 431, 436 (3d Dist. Ct. of App. 1934); *People* v. *Noggle*, 7 Cal.App.2d 14, 19, 45 P.2d 430, 433 (3d Dist. Ct. of App. 1935); *In re Grafmiller's Estate*, 27 Cal.App.2d 253, 256, 81 P.2d 181, 183 (3d Dist. Ct. of App. 1938).

Section 4986 as it has been construed by the California courts is clear enough. All or any portion of any uncollected tax levied may, on satisfactory proof, be cancelled if levied on property acquired after the lien date by the United States. This is mandatory insofar as the order by the board of supervisors or consent of the district or city attorney is concerned. The district court, familiar as it was with the California law, so held, saying that "the word 'may' in this section means 'must'" and that "there is no discretion involved in the requested actions of the Board of Supervisors" (R. 59). The substantive right to cancel the uncollected tax having been granted by laws of California to the United States, it is not open to the County and City of San Diego to question how or under what circumstances the United States may exercise its rights.

The appellants advance the proposition that taxes

which constitute a lien upon the land at the time of condemnation are ordinarily payable out of the award (Br. 9). Of course, that is true. See e.g., *Washington Water Power* v. *United States*, 135 F.2d 541 (C.A. 9, 1943), cert. den. 320 U.S. 747 (1943). A tax lien or any other valid lien is a prior charge on the amount paid as compensation for the taking of the property. *Thibodo* v. *United States*, 187 F.2d 249, 256 (C.A. 9, 1951). But the right of the state or its subdivisions to collect taxes out of a condemnation award is not the question now before this Court. The question is whether California has, voluntarily, given the United States the right when it condemns property to have uncollected taxes cancelled. The authority cited above shows that California has granted such a right to the United States.

The principal argument on which the appellants rely is that Section 4986(f) was not intended to apply to condemnation cases, but only purchases on the open market. Appellants cite absolutely no authority to sustain their conjecture. What was intended by this section must be derived from the words of the statute itself. There could be no more apt place to apply the basic rule of statutory interpretation, "where the words are plain there is no room for construction." *Osaka Shosen Line* v. *United States*, 300 U.S. 98, 101 (1937). In this case, the words say that uncollected taxes may be cancelled "on property acquired after the lien date by the United States." Appellants argument really is that "acquired" should be amended to read "acquired by purchase in the open market" or "acquired except where

acquisition occurs through use of eminent domain proceedings." But the statute does not so provide. It is applicable to all property "acquired" without exception as to the means of acquisition and would thus embrace purchase, donation, eminent domain, seizure or any other mode of acquisition of property.

The California Supreme Court has specifically held that the power to "acquire" includes the power to acquire by condemnation. *Deseret Etc., Co.* v. *State of California*, 167 Cal. 147, 157, 138 Pac. 981, 985 (1914), reversed on other grounds, *California* v. *Deseret Etc., Co.*, 243 U.S. 415 (1917). See also *Clark* v. *Los Angeles*, 160 Cal. 30, 48, 116 Pac. 722, 729 (1911), holding that the word "acquire" has a broader meaning than merely "purchase."

Appellants contend that *City of Los Angeles* v. *Board of Supervisors*, 108 Cal.App. 655, 292 Pac. 539 (3d Dist. Ct. of App. 1930), and related cases, cited on p. 8, *supra*, and holding that the right to have taxes cancelled given by Section 4986 are mandatory, have been "superseded," meaning overruled. Appellants rely on *Sherman* v. *Quinn*, 31 Cal. 2d 661, 192 P.2d 17 (1948); *Vista Irr. Dist.* v. *Bd. of Supervisors*, 32 Cal.2d 477, 196 P.2d 926 (1948); *Security First National Bank* v. *Board of Supervisors*, 35 Cal.2d 323, 217 P.2d 948 (1950). Appellants' contention that these cases "supersede" *City of Los Angeles* v. *Board of Supervisors* and related cases is not well taken. On the same day the California Supreme Court decided *Sherman* v. *Quinn*, *supra*, it applied in two related cases the prior holdings of *State Land Settlement Board* v. *Henderson*,

197 Cal. 470, 241 Pac. 560 (1925), and *People* v. *Board of Supervisors*, 126 Cal.App. 670, 15 P.2d 209 (3d Dist Ct. of App. 1932). *Eisley* v. *Mohan*, 31 Cal.2d 637, 192 P.2d. 5 (1948); *Dept. of Veterans affairs* v. *Board of Supervisors*, 31 Cal.2d 657, 192 P.2d 22 (1948). In neither case is there even the slightest indication that *State Land Settlement Board* v. *Henderson*, *People* v. *Board of Supervisors* or related cases have been overruled, superseded or modified in any way. To the contrary, the California Supreme Court said in *Dept. of Veterans Affairs* v. *Board of Supervisors (supra)*:

> Had the state agency been the owner of the property at the time the application for the cancellation of taxes was made, it would have been entitled to the relief sought.[3] People v. Board of Supervisors of Calaveras County, *supra*. [31 Cal.2d 659, 192 P.2d 23.]

The three cases relied on by appellants at most merely restate the well established rule that a writ of mandate will not issue where there is an adequate remedy at law. To insist, as appellants do, that "the right of cancellation no longer exists" is to ignore subsequent holdings of the California courts (Br. 11). *Bank of America Nat. T. & S. Ass'n* v. *Board of Supervisors*, 93 Cal.App.2d 75, 208 P.2d 772 (2d Dist. Ct. of App. 1949), hearing denied by Sup. Ct. 1949; *Oakdale Irr. Dist.* v. *County of Cala-*

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[3] The relief sought was the issuance of a writ of Mandamus to compel the board of supervisors to cancel a tax assessment pursuant to 4986 and 4986.4, Revenue and Taxation Code.

veras, 133 Cal.App.2d 127, 283 P.2d 732 (3d Dist. Ct. of App. 1955), hearing denied by Sup. Ct. 1955. These cases show not only that the right of cancellation still exists but that a writ of mandate will issue to compel the cancellation in the appropriate circumstances.

Nor can there be any hesitation about the fact situation in this appeal being appropriate for cancellation of the tax. The remedy at law is clearly inadequate, as the landowner who must pay the tax can get no relief except upon application of the United States under Section 4986 and obviously the United States would have no standing to sue for recovery of a tax it did not pay. Further, we are concerned in this appeal with the substantive rights of the United States to have the uncollected taxes cancelled and not with the particular procedural remedy which may be used in a state court. The district court had adequate procedural authority under the Declaration of Taking Act, 40 U.S.C. sec. 258a "to make such orders in respect of * * * liens * * * taxes * * * and other charges * * * as shall be just and equitable." The district court granted relief by way of summary judgment under Rule 56, F.R.C.P., not the issuance of a writ of mandate. It is not strictly germane to this appeal, therefore, in what circumstances a writ of mandate would have been issued in California courts. (Cf. R. 59).

Appellants argue that Section 3804a of the Political Code was changed when it was codified as Section 4986 of the Revenue and Taxation Code by virtue of Section 16 of the Revenue and Taxation

Code. Section 16 provides, as an aid in construction, that " 'shall' is mandatory and 'may' is permissive." Thus, appellants say that the prior interpretation of "may" in Section 3804a as mandatory could not be extended to Section 4986 (Br. 11). Appellants' argument ignores Section 2 of the Revenue and Taxation Code which provides:

> The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

The Attorney General of California has noted that since Section 2 uses "shall" it is, under Section 16, mandatory and not merely permissive. The Attorney General concludes that "the word 'may' as used in Sections 4986 and 4986.2 of the Revenue and Taxation Code should be construed as being mandatory." 2 Ops. Cal. Atty. Gen. 526, 528 (1943).[4] 6 Ops. Cal. Atty. Gen. 72, 73 (1945). It should be interpolated that since 2 Ops. Cal. Atty. Gen. 526 was issued, Section 4986 has been amended three times, 1944, 1947 and 1955[5] without any modification of the section which would indicate disagreement with the Attorney General's interpretation.

Appellants place some reliance on the fact that the California courts in their interpretations of Sec-

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[4] The Court's attention is invited to the exact date of this opinion, December 28, 1943, which is some four months later than the opinion set out in the appendix of appellants' brief.

[5] See West's Annotated Cal. Codes, Sec. 4986, Revenue and Taxation Code for legislative history.

tion 4986 are dealing with state agencies which have no power to acquire title before final judgment, saying that the Declaration of Taking Act has no counterpart in state law (Br. 11-13). The relevance of this suggestion is rather difficult to ascertain. So far as is here concerned, the difference when a declaration of taking is used is simply one as to the point in the condemnation proceeding at which title is transferred. The question here, whether taxes, which at the time of that transfer have become a lien but which cannot then be paid because they have not yet been levied and their amount determined, are to be cancelled is unaffected. Moreover, the California legislature must have been aware of the right of the United States to take title before ascertainment of just compensation when it added "property acquired after the lien date by the United States" to those classes of property on which uncollected taxes could be cancelled. The Declaration of Taking Act, 40 U.S.C. 258a, was enacted by the Act of February 26, 1931, 46 Stat. 1421. The reference to property acquired by the United States was added to Section 4986 by the 1941 amendment as part of subsection (e). Stats. 1941, C. 448, p. 1739, Section 1. In 1944, the section was again amended by deleting the reference to property acquired by United States in subsection (e) and adding it in subsection (f) as it now exists. Stats. 3d Ex. Sess. 1944, C. 5, p. 31, Section 2 effective May 16, 1944. Thus when the legislature last dealt with property acquired by the United States, the Declaration of Taking Act had been in effect for thirteen years and

had been extensively used during the World War II period. It is inconceivable that the California legislature was not aware of the right of the United States to take title to condemned property before final payment or that it did not act in the light of this knowledge when enacting the 1941 and 1944 amendments of Section 4986. For example, in January 1941, a proceeding was filed to condemn 72 acres of land on the City of Oakland's waterfront and this Court, just one year later, issued its opinion explaining the nature of the Declaration of Taking procedure. *City of Oakland* v. *United States*, 124 F.2d 959 (C.A. 9, 1942), cert. den. 316 U.S. 679 (1942).

Appellants raise the question whether Section 4986(f) as interpreted by the district court is in violation of Article 4, Section 31 of the California Constitution (Br. 13). Article 4, Section 31 provides that the legislature shall not "have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; * * *." Appellants concede the cancellation of taxes on property acquired by a public body for public purposes does not offend the Section (Br. 13). Inasmuch as appellants' concession covers the facts of this appeal precisely it would appear no further argument is necessary. The appellants content however, that a cancellation *solely* for the benefit of private landowners is repugnant to the Constitutional provision. We will assume the correctness of their conclusion if their premise were correct, but obviously a cancellation under Section 4986(f) is not *solely* for the

benefit of the private landowners. As has been pointed out earlier in our argument (*supra*, pp. 6, 7), the primary purpose of the statute is to expedite settlement and reduce the cost of land acquired by the United States. Where the cancellation of taxes serves a public purpose, the mere fact that property owners incidentally benefit from the cancellation does not render the statute invalid under Article 4, Section 31 of the California Constitution, *San Bernadino County* v. *Way*, 18 Cal.2d 647, 652-653, 117 P.2d 354, 359 (1941); *City of Ojai* v. *Chaffee*, 60 Cal.App.2d 54, 58-61, 140 P.2d 116, 118-119 (2d Dist. Ct. of App. 1943), and cases there cited; see also *Allen* v. *Franchise Tax Board*, 236 P. 2d 378, 380-381 (2d Dist. Ct. of App. 1951), affirmed 39 Cal.2d 109, 245 P.2d 297 (1952).

Appellants also controvert the authority of the district court to prohibit collection of the taxes from the landowners as a personal obligation under Section 3003 of the California Revenue and Taxation Code (Br. 14). The United States takes no position on appellants' contention that it is an open question in California whether a cause of action for taxes remains against the former owners personally after the land has become exempt. Nor is it necessary to consider that matter in order to uphold the judgment of the court below. Section 3003, upon which appellants base their argument, applies only to "delinquent taxes or assessments" (Br. 6). The district court proceeds under Section 4986 which provides for the *cancellation* of uncollected taxes. If the district court is correct, as we maintain, that

the United States is entitled to have the taxes cancelled the question of "delinquent taxes or assessments" could never arise. Certainly taxes cannot be "delinquent" prior to the time they are to to be paid. Here they were payable on November 1, 1955, and January 20, 1956 and did not become delinquent until December 10, 1955, and April 20, 1956.[6] But the United States acquired title on June 16, 1955, and applied for cancellation on November 4, 1955 (R. 26). Cancellation, which should have been allowed, should relate back at least to that date, hence there never were, here, "delinquent" taxes.

III

The Correct Interpretation Of Section 4986 Relieves The Landowners Of A Manifestly Unfair Tax Burden

Although it is not legally controlling, another reason for adopting the United States' interpretation of Section 4986 is that it is equitably superior to the interpretation urged by appellants. And since appellants' brief continues to touch upon these purely equitable considerations, it is appropriate for us to present a résumé of the equities. The United States has had possession of the property since 1953 under a taking for a term of years. When the fee simple was taken by the filing of the declaration of taking on June 16, 1955, the landowners' interest in the property was entirely terminated. *United States* v. *Carey*, 143 F.2d 445, 450 (C.A. 9, 1944); *United States* v. *Hayes*, 172 F.2d 677, 679 (C.A. 9, 1949);

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[6] See Sections 2605, 2606, 2617, 2618, Cal. Rev. & Tax. Code.

United States v. *44.00 Acres of Land, etc.*, 234 F.2d 410, 415 (C.A. 2, 1956), cert. den. 352 U.S. 916 (1956). The landowners became complete strangers to the land or what might happen to it thereafter. They were entitled to none of the income from the land, nor any appreciation in its value after that date.

The taxes which the appellants, City and County of San Diego, seek to collect are for the fiscal year beginning July 1, 1955, several days after the landowners' interest ceased. The appellants' contention that "The Government is further unsound and inaccurate in assuming that the taxes are imposed for a fiscal year" is wrong (Br. 15). One need look no further than the statute making taxes a lien to prove this. Section 2192 of the Cal. Rev. & Tax. Code states unequivocally that "All tax liens attach annually as of noon on the first Monday in March preceding *the fiscal year for which the taxes are levied.*" (Emphasis supplied). This obvious interpretation of Section 2192 is corroborated in the following excerpt from an explanation of the California tax system:

> The general property tax attaches as a lien at noon of the first Monday in March immediately preceding the fiscal year for which the tax is levied. The fiscal year commences on July 1, and the tax is generally levied around September 1.
>
> The California Tax System by J. Gould—West's Annotated Cal. Codes—Revenue & Tax. —Section 1-6000, p. 34, Vol. 59 (1956).

The conclusion is inescapable that the interpretation of the California Revenue & Taxation Code which the appellants urge upon this Court will result in the landowners being forced to pay taxes for a year during which they received no income from nor had any interest in the property and when the title, legal and equitable with the entire beneficial interest, was vested irrevocably in the United States. Insofar as taxes represented the payment for governmental services furnished to the land, the former owners received none of those benefits during the fiscal year for which appellants seek to make them pay.

The Court should not place this undeniably unfair burden on the landowners unless there is no alternative. Fortunately, there is a very sound alternative which can be recommended to the Court on both legal and equitable principles. That alternative is the interpretation of Section 4986 which the California courts have uniformly adopted, and which was adopted by the court below which is fully conversant with California law.

CONCLUSION

For the foregoing reasons it is submitted that the judgment of the district court is correct and should be affirmed.

Respectfully,

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